

APPEAL NO. 021714
FILED AUGUST 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 4, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appealed on sufficiency grounds, and asserted evidentiary error by the hearing officer. There is no response from the claimant in the appeal file.

DECISION

Affirmed.

The hearing officer did not err in excluding the functional capacity evaluation (FCE) offered by the carrier. The parties stipulated that the relevant qualifying period was from October 27, 2001, through January 25, 2002. The record reflects that the FCE in question was performed on September 17, 2001, and that the results were sent to the carrier via facsimile transmission on November 15, 2001. The benefit review conference (BRC), which led up to this hearing, was held on April 11, 2002. The carrier's attorney stated that he did not forward the FCE to the claimant until April 30, 2002, which was beyond the 15 days prescribed by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)), because that was the first time the carrier had supplied it to him. In its appeal, the carrier asserts that the FCE should have been admitted pursuant to Rule 142.13(c)(2), which provides that after the 15-day period for exchange of documents has expired, the parties shall exchange **additional** documentary evidence **as it becomes available**. The carrier, not the carrier's attorney, is a party to the claim. The disputed FCE report was available well before the BRC was held and it was not timely exchanged. We find no error in the hearing officer's ruling to exclude the FCE. We likewise reject the carrier's assertion that any documentation provided by the claimant's doctor outside of the qualifying period should not be considered. The law does not support this assertion.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the fourth quarter. The issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**STEVEN BISBY
8144 WALNUT HILL LANE
DALLAS, TEXAS 75231.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge